CHAPTER 626

S.P. 723 - L.D. 1964

An Act to Amend Certain Laws Administered by the Department of Environmental Protection

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the ability of agents for the Department of Inland Fisheries and Wildlife to retain $1 for each lake and river protection sticker was inadvertently repealed during the First Regular Session of the 120th Legislature; and

Whereas, in order to correct this error, it is necessary that this Act take effect immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §7794-B, first ¶, as enacted by PL 2001, c. 434, Pt. A, §3, is amended to read:

Beginning on January 1, 2002, and by January 1st of each subsequent year, the commissioner shall provide each agent authorized to register watercraft or issue licenses with a sufficient quantity of lake and river protection stickers for that boating season. The sticker must be in 2 parts so that one part of the sticker can be affixed to each side of the bow of a motorboat or personal watercraft. The fee for a sticker is $20 for a motorboat or personal watercraft not registered in the State and $10 for a motorboat or personal watercraft registered in the State. Each agent shall retain $1 for each sticker sold by that agent for which a fee is required. A

motorboat or a personal watercraft owned by the federal government, a state government or a municipality is exempt from the fee established in this section.

Sec. 2. 12 MRSA §9321, sub-§1, ¶I, as amended by PL 1997, c. 672, §2, is further amended to read:

I. In issuing a permit under section 9325, subsection 1, paragraph E, any prior convictions for violating that paragraph or section 9324, subsection ~~7~~ 7-A; and

Sec. 3. 12 MRSA §9324, sub-§7, as amended by PL 2001, c. 277, §1, is repealed.

Sec. 4. 12 MRSA §9324, sub-§7-A is enacted to read:

7-A. Solid waste. Except as provided in this subsection, the out-of-door burning of plastic, rubber, styrofoam, metals, food wastes, chemicals, treated wood or other solid wastes is prohibited in all areas of the State. For the purposes of this subsection, the term "lumber" means material that is entirely made of wood and is free from metal, plastics, coatings and chemical treatments and the term "wood wastes" means brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash, sawdust and wood from production rejects that are not mixed with other solid or liquid waste. The following materials are exempt from this subsection:

A. Wood wastes;

B. Painted and unpainted wood from construction and demolition debris;

C. Empty containers, including fiberboard boxes and paper bags, previously containing explosives and being disposed of in accordance with the provisions of Title 25, section 2472; and

D. Explosives being disposed of under the direct supervision and control of the State Fire Marshal.

Sec. 5. 12 MRSA §9324, sub-§8, as enacted by PL 2001, c. 277, §2, is repealed.

Sec. 6. 12 MRSA §9325, sub-§1, ¶E, as repealed and replaced by PL 1997, c. 512, §6, is amended to read:

E. ~~Residential out-of-door~~ Out-of-door burning of ~~highly combustible trash~~ wood wastes as defined in section 9324, subsection ~~7~~ 7-A and painted and unpainted wood and demolition debris in the open or ~~enclosed incinerators where municipal trash collection service as defined in section 9324, subsection 7 is not available or will not accept those materials. The incinerator must have been inspected and approved by a municipal fire chief, town forest fire warden or forest ranger using minimum criteria established by the director for safe operation~~ in an incinerator with a primary chamber volume no greater than 133 cubic feet or 1,000 gallons that is not licensed by the Department of Environmental Protection;

Sec. 7. 12 MRSA §9325, sub-§1, ¶¶F, G, I and J, as enacted by PL 1991, c. 36, §4, are amended to read:

F. ~~Residential open~~ Open burning of leaves, brush, deadwood and tree cuttings accrued from normal property maintenance by the individual landowner or lessee of the land unless expressly prohibited by municipal ordinance;

G. Burning on site for the disposal of ~~materials~~ wood wastes and painted and unpainted wood from construction and demolition debris generated from the clearing of any land or by the erection, modification, maintenance, demolition or construction of any highway, railroad, power line, communication line, pipeline, building or development;

I. Burning for the containment or control of spills of gasoline, kerosene, heating oil or similar petroleum products; ~~and~~

J. The burning of ~~brush~~ wood wastes and painted and unpainted wood from construction and demolition debris at ~~municipal~~ solid waste ~~disposal~~ facilities~~.~~; and

Sec. 8. 12 MRSA §9325, sub-§1, ¶K is enacted to read:

K. The burning of empty containers, including fiberboard boxes and paper bags, previously containing explosives and being disposed of in accordance with the provisions of Title 25, section 2472.

Sec. 9. 32 MRSA §10003, sub-§1, as amended by PL 2001, c. 231, §6, is further amended to read:

1. Establishment and membership. There is established within the Department of Environmental Protection, the Board of Underground Storage Tank Installers. The board consists of 7 members appointed by the Governor as follows: one from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association or the Maine Petroleum Association; one underground oil storage tank installer; one from the Maine Chamber ~~of Commerce and Industry~~ and Business Alliance or an underground oil storage tank inspector or a 2nd underground oil storage tank installer; one from the Maine Fire Chiefs Association; and 2 public members.

Sec. 10. 38 MRSA §420-A, sub-§6, as amended by PL 1997, c. 179, §3, is further amended to read:

6. Repeal. This section is repealed December 31, ~~2002~~ 2007.

Sec. 11. 38 MRSA §488, sub-§19, as amended by PL 1999, c. 776, §15, is further amended to read:

19. Municipal capacity. A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if it is located wholly within a municipality or municipalities meeting the criteria in paragraphs A to D as determined by the department and it is located wholly within a designated growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter II. The planning board of the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality. Review by the department is limited to the identified regional environmental impacts. The criteria are as follows:

A. A municipal planning board or reviewing authority is established and the municipality has adequate resources to administer and enforce the provisions of its ordinances. In determining whether this criterion is met, the commissioner may consider any specific and adequate technical assistance that is provided by a regional council;

B. The municipality has adopted a site plan review ordinance. In determining the adequacy of the ordinance, the commissioner may consider model site plan review ordinances commonly used by municipalities in this State that address the issues reviewed under applicable provisions of this article prior to July 1, 1997;

C. The municipality has adopted subdivision regulations. In determining the adequacy of these regulations, the commissioner may consider model subdivision regulations commonly used by municipalities in this State; and

D. The State Planning Office has determined that the municipality has a comprehensive land use plan and land use ordinances or zoning ordinances that are consistent with Title 30-A, chapter 187 in providing for the protection of wildlife habitat, fisheries, unusual natural areas and archaeological and historic sites.

The department, in consultation with the State Planning Office, shall publish a list of those municipalities determined to have capacity pursuant to this subsection. This list need not be established by rule and must be published by January ~~1, 1997~~ 1st of each year. The list must specify whether a municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common areas or open space or both types of development. The department may recognize joint arrangements among municipalities and regional organizations in determining whether the requirements of this subsection are met. ~~On and after January 1, 2003, the department shall presume and publish that each municipality with a population of 5,000 or more, as measured by the United States Census of the year 2000, has capacity as provided in this subsection.~~ The department may review municipalities that are determined ~~or presumed~~ to have capacity pursuant to this subsection for compliance with the criteria in paragraphs A to D, and if the department determines that a municipality does not meet the criteria, the department may modify or remove the determination of capacity.

A modification to a development that was reviewed by a municipality and exempted pursuant to this subsection is exempt as long as the modification will not cause the total area of the development to exceed the maximum acreage specified in this subsection for that type of development or, based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality.

Sec. 12. 38 MRSA §563, sub-§1, ¶A, as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §131, is further amended to read:

A. ~~No~~ A person may not install, or cause to be installed, a new or replacement underground oil storage facility without first having registered the facility with the commissioner in accordance with the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4, at least ~~5~~ 10 business days prior to installation. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement facility is to be installed shall inform the commissioner as soon as the emergency becomes known.

~~The owner or operator of the facility shall also promptly submit upon completion a copy of the registration form to the fire department in whose jurisdiction the underground tank will be located.~~

The owner or operator shall make available a copy of the facility's registration at that facility for inspection by the commissioner and authorized municipal officials.

Sec. 13. 38 MRSA §563, sub-§2, as repealed and replaced by PL 1991, c. 66, Pt. A, §22, is amended to read:

2. Information required for registration. The owner or operator of an underground oil storage facility shall provide the commissioner with the following information on a form in triplicate to be developed and provided by the commissioner; one copy to be submitted to the commissioner, one copy to be promptly submitted upon completion to the ~~fire department in~~

~~whose jurisdiction the underground tank is located~~ municipality and one copy to be retained by the owner or operator:

A. The name, address and telephone number of the owner of the underground oil storage tank to be registered;

B. The name, address and telephone number of the person having responsibility for the operation of the tank to be registered;

C. The location of the facility ~~shown on a United States Geological Survey topographic map for facilities located in rural areas or in relation to the nearest intersection for facilities located in urban areas and the location of the tank or tanks at that facility~~ as necessary to determine if

the facility meets the siting restrictions under section 563-C;

~~D. Whether the location of any tank at the facility is within 1,000 feet of a public drinking water supply or within 300 feet of a private drinking water supply;~~

E. The size of the tank to be registered;

F. The type of tank or tanks and piping at the facility and the type of product stored or contained in the tank or tanks and piping;

G. For new, replacement or retrofitted facilities, the name of the installer, the expected date of installation or retrofit, the nature of any emergency pursuant to subsection 1, paragraph A, if applicable, and a description or plan showing the layout of the facility or tank, including the form of secondary containment, other forms of leak detection or equipment to be installed pursuant to section 564, subsection 1, paragraph A and, when applicable, the method of retrofitting leak detection pursuant to section 564, subsection 1 or 1-A;

H. For existing facilities and tanks, the best estimate of the age and type of tank or tanks at the facility; and

I. Expiration date of tank manufacturer's warranty.

~~The owner or operator shall comply with the requirements of paragraph C by January 1, 1991.~~

Sec. 14. 38 MRSA §566-A, sub-§5, as amended by PL 1991, c. 817, §21, is further amended to read:

5. Qualified personnel. All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal must be removed under the direct, on-site supervision of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A, or of certified fire-fighting personnel, except for underground gasoline storage tanks removed pursuant to subsection 6. The Board of Underground Oil Storage Tank Installers may examine and ~~upon passage of the examination~~ the commissioner may certify fire-fighting personnel to supervise the removal of Class 1 underground oil storage facilities upon passage of the examination for an

underground gasoline storage tank remover. Fire-fighting personnel may only supervise the removal of an underground facility or tank:

A. Within the municipality with which they are affiliated or within the jurisdiction that the municipality with which they are affiliated has a compact; and

B. If the fire-fighting personnel have written authorization from the municipality with which they are affiliated.

Sec. 15. 38 MRSA §570-M is enacted to read:

§570-M. Prohibition on adding water to well

Except as provided in this section, a person may not add water to a well. Water may be added to a well by:

1. Licensed well driller. A well driller licensed under Title 32, chapter 69-C using water that is in conformance with rules adopted under that chapter;

2. Authorized water transporter. A person authorized to transport water under Title 22, section 2660-A using water in conformance with rules adopted under that section; or

3. Well injection. Well injection into a Class V well as authorized and licensed by the department pursuant to rules adopted by the board.

For the purposes of this section, the term "well" means any hole dug, drilled, driven or bored into the earth used to extract drinking water and does not include monitoring wells, wells constructed exclusively for the relief of artesian pressure at hydroelectric projects, wells constructed for temporary dewatering purposes and wells constructed for the purposes of extracting oil, gas or brine.

Sec. 16. 38 MRSA §590, sub-§1, as enacted by PL 1991, c. 658, §1, is amended to read:

1. License required. After ambient air quality standards and emission standards have been established within a region, the board may by rule provide that a person may not operate, maintain or modify in that region any air contamination source

or emit any air contaminants in that region without an air emission license from the department. An incinerator may not be used to dispose of solid waste without a license from the department, except an incinerator with a primary chamber volume no greater than 133 cubic feet or 1,000 gallons that burn only wood waste as defined in Title 12, section 9324, subsection 7-A and painted and unpainted wood from construction and demolition debris.

Sec. 17. 38 MRSA §1273, sub-§2, as amended by PL 1993, c. 355, §40, is further amended to read:

2. Notification required. A person, owner or operator may not engage in any asbestos abatement activity over 3 linear feet or 3 square feet of friable asbestos-containing material unless that person, owner or operator notifies the commissioner in writing. This notification must be postmarked at least 10 calendar days before or delivered to the department at least 5 working days prior to beginning any on-site work, including on-site preparation work~~, that has the potential to release asbestos fibers~~. The department may approve a reduction in the number of days required for notification on a case-by-case basis when unforeseeable circumstances or compliance with standard notification procedures may cause a threat to the environment or human health.

Sec. 18. 38 MRSA §1310-E, sub-§4, as enacted by PL 1993, c. 732, Pt. C, §12, is amended to read:

4. Subsequent landfill closure activity. Any municipality that closes a landfill pursuant to subsection 1, 2 or 3 and that inspects, monitors and maintains the closure measures required pursuant to those subsections as necessary to ensure the closure measures remain effective is entitled to an assurance from the department that the municipality has met its closure obligations and that no further closure action other than inspection, monitoring and maintenance is required of the municipality by the department with regard to that landfill unless one or more of the following circumstances arises:

A. The commissioner finds that the landfill, although closed, is nonetheless a high-risk landfill and orders further closure or remediation activities;

B. Additional closure or remediation activities are needed and the department's cost share of the additionally required activity is immediately available; or

C. Additional closure or remediation activities are required as a result of an existing or pending formal department enforcement action with respect to the violation of the license conditions under which a landfill was operated.

Nothing with regard to this assurance is construed to limit the department's authority to act using its own resources as that activity may be otherwise authorized by law.

Sec. 19. 38 MRSA §1319-I, sub-§11 is enacted to read:

11. Waiver. The commissioner may waive payment of fees under this section if the commissioner finds the amount involved is too small in relation to the cost of collection.

Sec. 20. 38 MRSA §1661-A, sub-§5, as enacted by PL 2001, c. 373, §3, is amended to read:

5. Product components. Notwithstanding subsection 1, paragraph ~~B~~ C, the manufacturer of a product containing one or more mercury-added components is not required to include information on the ~~purpose for which the mercury in the component is used~~ amount of mercury in the component in the notice to the department if the component manufacturer has provided that information to the department and the manufacturer of the product that contains the component identifies the component and component manufacturer in the notice.

Sec. 21. 38 MRSA §2133, sub-§2-A, as amended by PL 1999, c. 385, §4, is further amended to read:

2-A. Technical and financial assistance program. A program of technical and financial assistance for waste reduction and recycling is established in the office to assist municipalities with managing solid waste. The office may also provide planning assistance to municipalities and regional organizations for managing municipal solid waste. Planning assistance may include cost and capacity analysis and education and outreach activities. The director shall administer the program in accordance with the waste management hierarchy in section 2101. Preference in allocating resources

under this section must be given to municipalities that take advantage of regional economies of scale. ~~Preference may also be given to municipalities that provide a municipal trash collection service as defined in Title 12, section 9324, subsection 7 or that prohibit residential out-of-door burning of highly combustible trash.~~

Sec. 22. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 12, section 7794-B, first paragraph applies retroactively to January 1, 2002.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.